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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2008-174

13 **DIANA KATHRYN PAOLI**
1073 Thompson Avenue
14 Napa, CA 94558

ACCUSATION

15 **Registered Nurse License No. 458073,**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. **Diana Kathryn Paoli**. On or about August 31, 1990, the Board of
23 Registered Nursing ("Board") issued Registered Nurse License Number 458073 to Diana
24 Kathryn Paoli ("Respondent"). The license will expire on July 31, 2008, unless renewed.

25 **JURISDICTION**

26 3. Section 2750 of the Business and Professions Code ("Code") provides:

27 Every certificate holder or licensee, including licensees
28 holding temporary licenses, or licensees holding licenses placed
in an inactive status, may be disciplined as provided in this article

1 [Article 3 of the Nursing Practice Act (Bus. & Prof. Code, § 2700
2 et seq.)). As used in this article, 'license' includes certificate,
3 registration, or any other authorization to engage in practice
4 regulated by this chapter. The proceedings under this article
5 shall be conducted in accordance with Chapter 5 (commencing
6 with Section 11500) of Part 1 of Division 3 of Title 2 of the
7 Government Code [the Administrative Procedure Act], and
8 the board shall have all the powers granted therein.

9 STATUTORY PROVISIONS

10 4. Code section 2761 provides, in pertinent part:

11 The board may take disciplinary action against a certified
12 or licensed nurse or deny an application for a certificate or license
13 for any of the following:

14 (a) Unprofessional conduct

15 5. Code section 2762 provides, in pertinent part:

16 In addition to other acts constituting unprofessional conduct
17 within the meaning of this chapter [the Nursing Practice Act], it is
18 unprofessional conduct for a person licensed under this chapter to
19 do any of the following:

20 (a) Obtain or possess in violation of law, or prescribe,
21 or except as directed by a licensed physician and surgeon,
22 dentist, or podiatrist administer to himself or herself, or
23 furnish or administer to another, any controlled substance
24 as defined in Division 10 (commencing with Section 11000) of
25 the Health and Safety Code or any dangerous drug or dangerous
26 device as defined in Section 4022.

27

28 (e) Falsify, or make grossly incorrect, grossly inconsistent,
or unintelligible entries in any hospital, patient, or other record
pertaining to the substances described in subdivision (a) of this
section.

6. Code section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug
or device unsafe for self-use in humans or animals, and includes
the following:

(a) Any drug that bears the legend: "Caution: federal law
prohibits dispensing without prescription," "Rx only," or words
of similar import.

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1 (b) Any device that bears the statement: "Caution:
2 federal law restricts this device to sale by or on the order of a
3 _____," "Rx only," or words of similar import, the blank
to be filled in with the designation of the practitioner licensed
to use or order use of the device.

4 (c) Any other drug or device that by federal or state
5 law can be lawfully dispensed only on prescription or furnished
pursuant to Section 4006.

6 7. Code section 4060 provides:

7 No person shall possess any controlled substance, except
8 that furnished to a person upon the prescription of a physician,
9 dentist, podiatrist, optometrist, veterinarian, or naturopathic
10 doctor pursuant to Section 3640.7, or furnished pursuant to a
11 drug order issued by a certified nurse-midwife pursuant to
12 Section 2746.51, a nurse practitioner pursuant to Section 2836.1,
13 a physician assistant pursuant to Section 3502.1, a naturopathic
14 doctor pursuant to Section 3640.5, or a pharmacist pursuant
15 to either subparagraph (D) of paragraph (4) of, or clause (iv)
of subparagraph (A) of paragraph (5) of, subdivision (a) of
Section 4052. This section shall not apply to the possession
of any controlled substance by a manufacturer, wholesaler,
pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse- midwife, nurse
practitioner, or physician assistant, when in stock in containers
correctly labeled with the name and address of the supplier
or producer.

16 8. Health and Safety Code section 11173, provides, in pertinent part:

17 (a) No person shall obtain or attempt to obtain controlled
18 substances, or procure or attempt to procure the administration of
19 or prescription for controlled substances, (1) by fraud, deceit,
misrepresentation, or subterfuge; or (2) by the concealment of a
material fact.

20 9. Code section 125.3 provides that the Board may request the administrative
21 law judge to direct a licensee found to have committed a violation or violations of the licensing
22 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
23 the case.

24 DRUGS

25 10. "Demerol" is a Schedule II controlled substance pursuant to Health and
26 Safety Code section 11055, subdivision (c) (17), and a dangerous drug within the meaning of
27 Code section 4022.

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1 **Background**

2 11. During the period February 14, 2005, through on or about May 29, 2005,
3 Respondent was employed as a licensed registered nurse at Sutter Solano Medical Center
4 (SSMC), located in Vallejo, California.

5 12. On or about June 6, 2005, an audit of several SSMC patient and
6 medication dispensing system (Pyxis^{1/}) records disclosed that Respondent obtained multiple
7 doses of Demerol for patient administration without a physician's order to do so. She later
8 failed to record the disposition of those controlled substances in any hospital, patient, or other
9 record. On or about August 20, 2005, Respondent's employment with SSMC was terminated.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (False, Grossly Incorrect, Grossly Inconsistent Record Entries)

12 13. Respondent's license is subject to discipline for unprofessional conduct
13 under Code sections 2761, subdivision (a), and 2762, subdivision (e), in that while employed
14 as a registered nurse at SSMC, Respondent made false, grossly incorrect, or grossly inconsistent
15 entries in hospital, patient, or other records pertaining to controlled substances, as follows:

16 a. Patient M. K. On or about February 14, 2005, at approximately 1012
17 hours, without a physician's order to do so, Respondent obtained a 50 mg dose of Demerol for
18 administration to Patient M. K. Respondent failed to account for the 50 mgs of Demerol in
19 any hospital, patient, or other record.

20 b. Patient A. M. On or about March 13, 2005, at approximately 1441
21 hours, without a physician's order to do so, Respondent obtained a 50 mg dose of Demerol for
22 administration to Patient A. M. Respondent failed to account for the 50 mgs of Demerol in
23 any hospital, patient, or other record.

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25 1. Pyxis is a brand name for an automated medication dispensing and supply system manufactured by
26 Cardinal Health Company. A PIN access code is used to access controlled substances from the system which
27 automatically logs all transactions involving the removal of controlled substances, identifying the name of the
28 person accessing the system, the patient's name for whom the substances have been ordered, and the date, time,
and dosage being obtained.

1 c. Patient C.M. On or about March 27, 2005, at approximately 1106
2 hours, without a physician's order to do so, Respondent obtained a 50 mg dose of Demerol for
3 administration to Patient C. M. Respondent failed to account for the 50 mgs of Demerol in
4 any hospital, patient, or other record.

5 d. Patient J. M. On or about April 1, 2005, at approximately 1011
6 hours, Respondent obtained a 100 mg dose of Demerol for administration to Patient J. M.
7 Respondent failed to account for the 100 mgs of Demerol in any hospital, patient, or other
8 record.

9 e. Patient D. G. On or about April 8, 2005, at approximately 1355
10 hours, without a physician's order to do so, Respondent obtained a 100 mg dose of Demerol
11 for administration to Patient D. G. Respondent failed to account for the disposition of 50 mgs of
12 the 100 mg dose of Demerol in any hospital, patient, or other record.

13 f. Patient I. C. On or about April 10, 2005, at approximately 1456
14 hours, without a physician's order to do so, Respondent obtained a 100 mg dose of Demerol
15 for administration to Patient I.C. Respondent failed to account for the disposition of 50 mgs of
16 the 100 mg dose of Demerol in any hospital, patient, or other record.

17 g. Patient I.C. On or about May 14, 2005, at approximately 0727
18 hours, without a physician's order to do so, Respondent obtained a 100 mg dose of Demerol
19 for administration to Patient I. C. Respondent failed to account for the 100 mgs of Demerol
20 in any hospital, patient, or other record.

21 h. Patient J. M. On or about May 21, 2005, at approximately 1604
22 hours, without a physician's order to do so, Respondent obtained a 100 mg dose of Demerol
23 for administration to Patient J. M. Respondent failed to account for the 100 mgs of Demerol
24 in any hospital, patient, or other record.

25 i. Patient A. C. On or about May 28, 2005, at approximately 1023
26 hours, without a physician's order to do so, Respondent obtained a 100 mg dose of Demerol
27 for administration to Patient A. C. Respondent failed to account for the disposition of 50 mgs of
28 the 100 mg dose of Demerol in any hospital, patient, or other record.

1 j. Patient I. C. On or about May 29, 2005, at approximately 0724 hours
2 and 0802 hours, without a physician's order to do so, Respondent obtained a total dosage of
3 100 mgs of Demerol for administration to Patient I. C. Respondent failed to account for the
4 100 mgs of Demerol in any hospital, patient, or other record.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Wrongfully Obtaining a Controlled Substance/Dangerous Drug)

7 14. Respondent's license is subject to discipline for unprofessional
8 conduct under Code sections 2761, subdivision (a), and 2762, subdivision (a), in that, as
9 set forth under paragraphs 13(a) through 13(c), and paragraphs 13(e) through 13(j) above,
10 Respondent obtained Demerol, a controlled substance/dangerous drug, by fraud, deceit,
11 misrepresentation, or subterfuge, or by the concealment of material facts, in violation of
12 Health and Safety Code section 11173, subdivision (a).

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Wrongfully Possessing a Controlled Substance/Dangerous Drug)

15 15. Respondent's license is subject to discipline for unprofessional conduct
16 under Code sections 2761, subdivision (a), and 2762, subdivision (a), in that, as set forth under
17 paragraphs 13(a) through 13(c), and paragraphs 13(e) through 13(j) above, Respondent possessed
18 Demerol, a controlled substance/dangerous drug, in violation of Code section 4060.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing the Board issue a decision:

1. Revoking or suspending Registered Nurse License Number 458073, issued to Diana Kathryn Paoli;
2. Ordering Diana Kathryn Paoli to pay the reasonable costs incurred by the Board in the investigation and enforcement of this case pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/5/07



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant